



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No: 0859-22

Ref: Signature date

█
█
█

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the Board waived the statute of limitation in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 23 May 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, applicable statutes, regulations, and policies, to include the Kurta memo and 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo). Additionally, the Board considered the advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

On 6 September 1981, you entered active duty with the Navy with waivers for use of cocaine and arrests for possession of marijuana. On 5 April 1985, you began a period of unauthorized absence (UA) which lasted 50 minutes. On 16 April 1985, you received nonjudicial punishment (NJP) for a period of UA. On 5 August 1986, you were discharged with an Honorable discharge characterization of service by reason of expiration of enlistment.

On 6 August 1986, you began a second period of active duty. On 5 May 1988, you received a second NJP for a period of UA. On 14 December 1988, you were convicted by special court martial (SPCM) for wrongful possession of a controlled substance-cocaine. You were sentenced

to a bad conduct discharge (BCD), reduction to the rank of E-1, confinement at hard labor for 30 days, and forfeiture of pay for one month. On 4 August 1989, the Naval Clemency and Parole Board denied your request for clemency and restoration. On 28 December 1989, your SPCM sentence was affirmed. On 24 May 1990, you were discharge with a BCD characterization of service by reason of conviction by SPCM. On 2 November 2016, this board denied your request for a discharge characterization of service upgrade.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your contention that you were diagnosed with Post Traumatic Stress Disorder (PTSD) and drug abuse disorder. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 12 April 2022. The AO stated in pertinent part:

Among the available documents, there is no evidence that the Petitioner was diagnosed with a mental health condition during military service. Throughout his military processing, there were no concerns raised of a mental health condition that required evaluation. Unfortunately, he has provided no medical evidence in support of his claims. It is not possible to establish a nexus with his misconduct, as he had pre-service substance use and there is insufficient information regarding his purported mental health diagnoses. Additional records (e.g., post-service medical records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition.”

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. In addition, the Board considered the negative impact it likely had on the good order and discipline of your command. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

6/15/2022

█

Executive Director

█